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**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17****RIN 1018-AB42****Endangered and Threatened Wildlife and Plants; Proposed Threatened Status under "Similarity of Appearance" Provisions for *Felis concolor* in Florida****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

**SUMMARY:** The Florida panther (*Felis concolor coryi*) is listed as an endangered species under the Endangered Species Act of 1973 (Act), as amended. The Service now proposes to list all other free-living *Felis concolor* (common names: mountain lion, cougar, puma, panther, etc.) as threatened under the "Similarity of Appearance" provisions of the Act wherever they may occur in Florida. This action is necessary to protect the listed endangered Florida panther from illegal take. For the untrained eye, it is very difficult for individuals of Florida panthers to be distinguished from individuals of unlisted subspecies of *Felis concolor*. Unlisted species of cougars periodically occur in Florida either as escapees from captivity or are deliberately turned loose.

**DATES:** Comments from all interested parties must be received by October 26, 1990. Public hearing requests must be received by October 11, 1990.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Field Supervisor, Jacksonville

Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32218. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:**

David J. Wesley, Field Supervisor, at the above address (904) 791-2580 or FTS 946-2580.

**SUPPLEMENTARY INFORMATION:**

**Background**

Under the "Similarity of Appearance" provisions of Section 4(e) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and associated regulations (50 CFR 17.50 and 17.51), species (or subspecies or other groups of wildlife) which are not considered to be endangered or threatened, may nevertheless be treated as such for the purpose of providing protection to a species (or subspecies or other groups of wildlife) that is biologically endangered or threatened. Under these "Similarity of Appearance" provisions the Service must find: (a) That the species so closely resembles in appearance an endangered or threatened species that enforcement personnel would have substantial difficulty in identifying listed from unlisted species; (b) that the effect of this substantial difficulty is an additional threat to the endangered or threatened species; and (c) that such treatment of an unlisted species will substantially facilitate the enforcement and further the purposes of the Act. This proposal is consistent with all three of those provisions.

The Florida Game and Fresh Water Fish Commission (Commission) estimates that at least several hundred mountain lions are currently held in captivity in Florida. These animals are often of unknown origin, but most are probably from the western U.S. Occasionally, captive mountain lions accidentally escape or are deliberately released. According to the Commission's Division of Law Enforcement, twenty known escapes of mountain lions have occurred in the last few years, and 48 mountain lions are seized in 1989, mostly for illegal possession. There is a risk that Florida panthers will be killed under the assumption or justification

that they are escaped mountain lions. There also is a need to protect mountain lions which are released experimentally in the course of recovery work for the Florida panther. In 1989, five Texas mountain lions were released in Osceola National Forest as surrogates to test the suitability of the habitat for Florida panthers. During the study, one cougar was known to have been shot and killed illegally, and another such killing was suspected. A mountain lion from a private zoo near Bonita Springs was illegally shot and killed within two days of its escape in March 1990.

Because it is almost impossible to distinguish between the listed and unlisted subspecies of *Felis concolor*, it has been difficult or impossible to prosecute cases of illegal take. Therefore, in order to further the purposes of the Act in providing protection for the endangered Florida panther, the Service makes the following findings: (1) That enforcement personnel, as well as nearly all other persons, would be unable to routinely separate the listed Florida panther from unlisted subspecies of *Felis concolor*; (2) that the Florida panther is so endangered in the wild that the loss of a single animal through illegal take could seriously jeopardize the survival of the subspecies; and (3) that the take of any *Felis concolor* in areas where the listed Florida panthers occur would be without regard for, or forehand knowledge of, the status of that particular individual of *Felis concolor*, and thus would pose direct and indirect threats to the endangered Florida panther.

The Service now proposes to list, for law enforcement purposes, any free-living *Felis concolor* not otherwise identifiable as a Florida panther (*Felis concolor coryi*) as threatened under section 4(e). "Similarity of Appearance" provisions, of the Act wherever it may be found in the wild in Florida. Free-living *Felis concolor* in Florida would be allowed to be taken only under permit (50 CFR 17.52) or by a Service or state-designated agent when it has been established by the Service, in consultation with the State, that the animal in question is not a Florida panther (*Felis concolor coryi*). Notwithstanding this prohibition, it would remain legal for any party to take *Felis concolor* in Florida in defense of his own life or the lives of others (see 50

CFR 17.21(c)(2)). It would also remain legal for agents of the Service or the Florida Game and Fresh Water Fish Commission to remove or take *Felis concolor* that constituted a demonstrable but nonimmediate threat to human safety (see 50 CFR 17.21(c)(3)(iv)). Section 7 of the Act, Interagency Cooperation, does not apply to animals protected by similarity of appearance.

**National Environmental Policy Act**

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4 of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the *Federal Register* on October 25, 1983 (48 FR 49244).

**Author**

The primary author of this proposed rule is Dr. Michael M. Bentzien, Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, and Transportation.

**Proposed Regulation Promulgation**

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

**PART 17—[AMENDED]**

1. The authority citation of Part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1543; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following in alphabetical order under Mammals, to the List of Endangered and Threatened Wildlife:

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*

(h) \* \* \*

| Species             |                             | Historic range               | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---------------------|-----------------------------|------------------------------|--|--------|-------------|------------------|---------------|
| Common name         | Scientific name             |                              |  |        |             |                  |               |
| MAMMALS             |                             |                              |  |        |             |                  |               |
| Lion, mountain..... | <i>Felis concolor</i> ..... | Canada to South America..... | U.S.A. (FL).....                                     | T(S/A) | .....       | NA               | 17.40(h)      |

3. It is further proposed to amend § 17.40 by adding a new paragraph (h) as follows:

§ 17.40 Special rules—mammals.

(h) Mountain lion (*Felis concolor*). (1) Except as allowed in paragraphs (h)(2) and (h)(3) of this section, no person shall take any mountain lion (*Felis concolor*) in Florida.

(2) A mountain lion (*Felis concolor*) may be taken in this area under a valid

endangered species permit issued pursuant to 50 CFR 17.52.

(3) A mountain lion (*Felis concolor*) may be taken by a Service or state-designated agent when it has been established by the Service, in consultation with the state, that the animal in question is not a Florida panther (*Felis concolor coryi*) or an eastern cougar (*Felis concolor cougar*).

(4) Take for reasons of human safety is allowed as specified under 50 CFR 17.21(c)(2) and 17.21(c)(3)(iv).

(5) Any taking pursuant to paragraph (h)(4) of this section must be reported in writing to the U.S. Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 19183, Washington, DC 20036, within 5 days. The specimen may only be retained, disposed of, or salvaged in accordance with directions from the Service.

Dated: August 8, 1990.

**Bruce Blanchard,**

*Acting Director, Fish and Wildlife Service.*  
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